

# Sexual Misconduct Case Management Introduction (Part 1)

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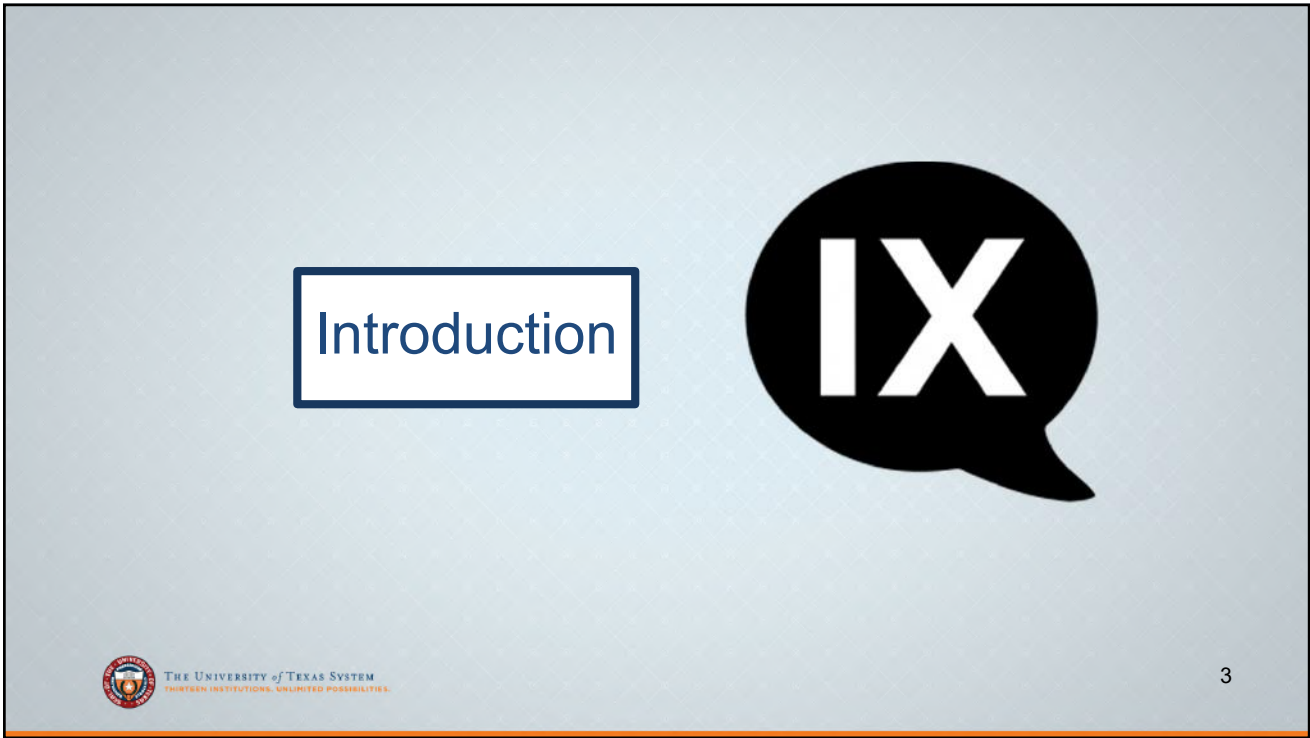
## Agenda

1. Title IX Introduction
2. Triage & Case Management:
  - Reports v. Formal Complaints
  - Decision Points
3. Resolution Options:
  - Formal Complaint Dismissals
  - Informal Resolutions
  - Formal Grievance Process
4. Threat Assessment Overview & Emergency Removals
5. Adjudication Stage
  - Transition Steps
  - Logistics & Coordination
6. Documentation & Record Keeping



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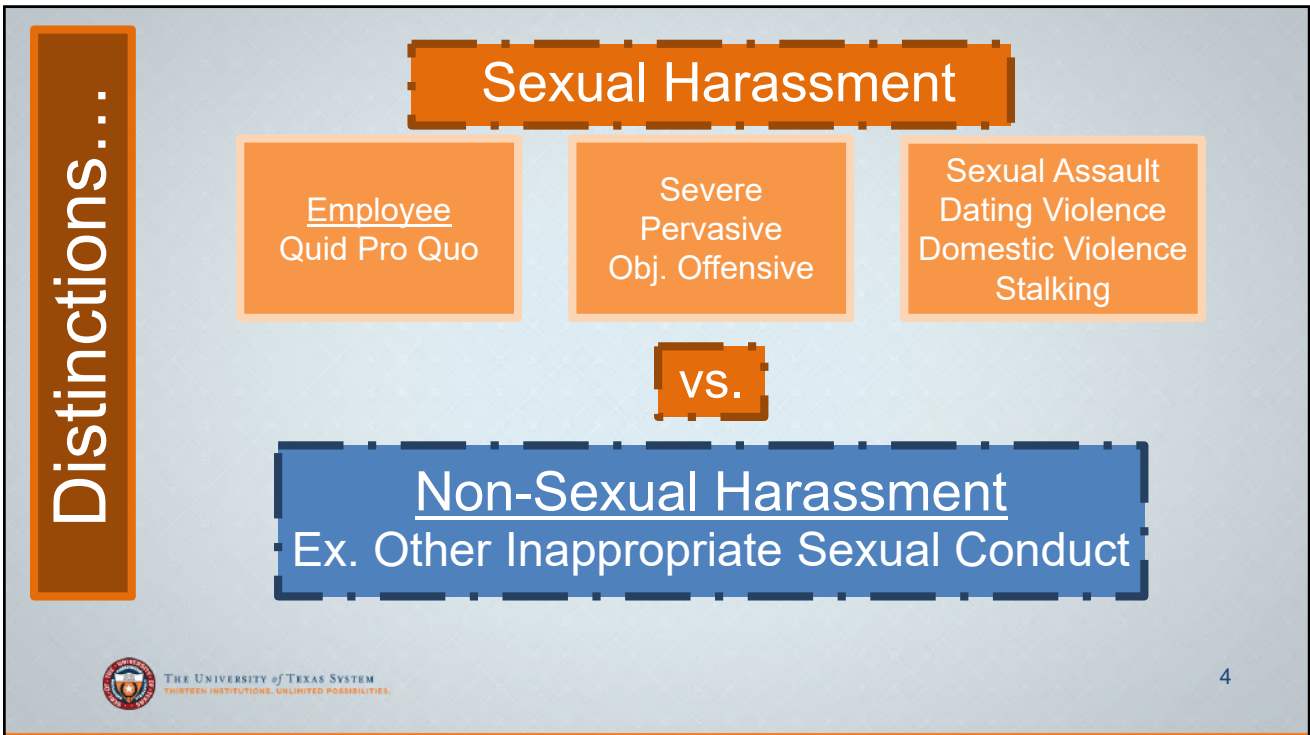
Introduction

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Distinctions...

**Sexual Harassment**

- Employee Quid Pro Quo
- Severe Pervasive Obj. Offensive
- Sexual Assault  
Dating Violence  
Domestic Violence  
Stalking

VS.

**Non-Sexual Harassment**  
Ex. Other Inappropriate Sexual Conduct

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# Definition of "Sexual Harassment" under Title IX

Conduct on the basis of sex that satisfies one or more of the following:

1. An **employee** of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);
2. Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the institution's education program or activity; or
3. **"Sexual assault," "dating violence," "domestic violence,"** or **"stalking"** as defined under Clery/VAWA.



Source: Title IX Regulations (2020)

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## #2 Element Examples



- **"Severe"**: Physically threatening or humiliating; effects of the alleged conduct to a reasonable person (using a "reasonable person" standard)
- **"Pervasive"**: Frequency, duration of the alleged conduct
- **"Objectively offensive"**: To a reasonable person (using a "reasonable person" standard)
- **"Effectively denies...equal access"**: Totality of the circumstances

For example, the degree of the alleged conduct's interference with the CP or effects in an educational setting, type of alleged conduct, frequency and duration of the conduct, knowingly unwelcome in nature



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## “Education program or activity” under Title IX

Includes locations, events, or circumstances over which the institution exercises **substantial control** over both the respondent and the context in which the alleged sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.

- **Example** of a “building owned or controlled by a student organization”: **Fraternity or sorority house** that is occupied by students of the organization, and the student organization is a recognized organization with the institution.



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Source: Title IX Regulations (2020)

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## Definition of “Other Inappropriate Sexual Conduct”

Conduct on the basis of sex that does not meet the definition of “sexual harassment” (under the Model Policy), but is

1. Verbal conduct (including through electronic means), unwanted statements of a sexual nature intentionally stated to a person or group of people, that are objectively offensive to a reasonable person and also so **severe or pervasive** that it created a Hostile Environment, as defined in the Model Policy.
2. Physical conduct...



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Source:  
UT System Model Policy for Sexual Misconduct (2021)

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## Definition of “Other Inappropriate Sexual Conduct” (Cont.)

### Possible Examples (depending on facts):

- Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
- Requests for sexual favors (including overt or subtle pressure);
- Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences;
- Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- Persistent, unwanted sexual or romantic attention;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials;
- Deliberate, repeated humiliation or intimidation;
- Sexual exploitation;
- Unwelcome intentional touching of a sexual nature; or
- Deliberate physical interference with or restriction of movement.



Source:

*UT System Model Policy for Sexual Misconduct (2021)*

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Institutions must reasonably respond in light of known circumstances...



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## Why is it important that institutions respond to reports of sexual misconduct?

Stop

Prevent

Remedy

### Institutions provide:

- Campus remedies & supportive measures (with or without filing a formal complaint)
- Prompt, fair, & equitable grievance processes (by filing a formal complaint)
- Preponderance of the evidence standard (in the formal grievance process)
- An informal resolution option (in some circumstances, if available)



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## Key Pillars: Title IX Process

Impartiality

Respect

Fairness

Equity

For all of the participants  
in the process:

*Complainants*

*Respondents*

*Witnesses*

*Third-party Reporters*



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## Serving Impartially in Your Role

- Must avoid **prejudgment** of the facts at issue
- Must avoid **conflicts of interest**
- Must avoid **bias**



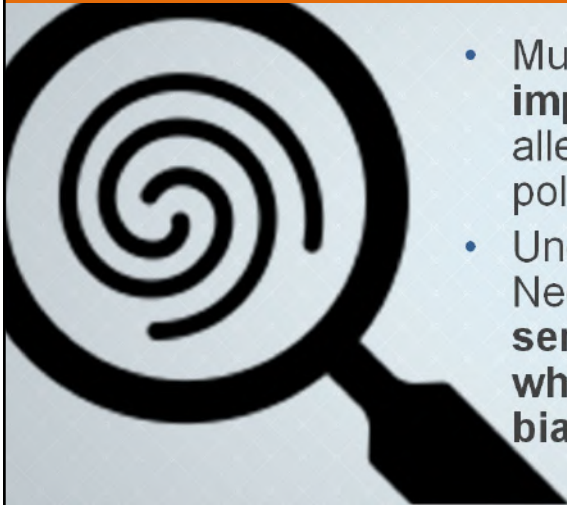
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Source: Title IX Regulations (2020)

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## Principles for Title IX Process



- Must maintain **complete neutrality & impartiality at all times** in investigating alleged conduct violations of institutional policies.
- Understanding bias & whether it exists: Need to take an “**objective, common sense approach to evaluating whether a person serving in a role is biased.**” (*Title IX Preamble (2020)*)...



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# Avoiding Bias

- Must **not** treat a party differently:
  - On the basis of the person's **sex**;
  - On **stereotypes** about how men or women behave with respect to sexual violence; and/or
  - On the basis of the person's **characteristics**: sex, race, ethnicity, sexual orientation, gender identity, disability, immigration status, financial ability, socioeconomic status, or other characteristic.



Source: Title IX Preamble (2020)

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# Institutional Policy & Definitions



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## Institutional Sexual Misconduct Policy (Example)

Prohibits sex discrimination, sexual harassment, retaliation, and other prohibited conduct under the policy, including:

- Sex Discrimination
- Sexual Harassment
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- Retaliation
- Sexual Exploitation
- Other Inappropriate Sexual Conduct
- False Information & False Complaints
- Interference with the Grievance Process
- Failure to Report (for Responsible Employees)

**Policy Differences Note:** For the purposes of this training, the UTS Model Policy for Sexual Misconduct will be the primary policy reference. UT Institutional policies may have some differences.



Source:  
*UT System Model Policy for Sexual Misconduct (2021)*

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## First Amendment Rights: Free Speech & Academic Freedom

Constitutionally protected expression cannot be considered Sexual Misconduct (e.g. “sexual harassment,” “other inappropriate sexual conduct”) under the institution’s Sexual Misconduct policy.

**Note:** Neither party may be restricted from discussing allegations or from gathering evidence in a grievance process.

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## Academic Freedom Analysis

### Possible questions and/or issues to consider further:

- a. Is there a sufficient pedagogical nexus to the curriculum and expression at issue?
- b. Does the expression at issue conflict with policies or standards of conduct?
- c. Is the expression at issue being addressed (e.g. investigated, examined) because of its disruptive effect?
- d. Is the expression at issue being addressed (e.g. investigated, examined) because of the content of the speech?
- e. Any mitigating action by the faculty, such as giving trigger/content warnings of the possibly provocative content?



## Retaliation Prohibited under Title IX

No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX; or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

## Definition of "Retaliation"

Any **adverse action** (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities.

**Note:** Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.



Source:  
*UT System Model Policy for Sexual Misconduct (2021)*

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## Responsible Employee Reporting Requirements

Under the institution's Sexual Misconduct Policy, **Responsible Employees** have a duty to report incidents and information reasonably believed to be sexual misconduct (prohibited conduct defined) under the Policy.

All employees are Responsible Employees (except Confidential Employees or police officers when a victim uses a pseudonym form). Responsible Employees include all administrators, faculty, and staff.

Responsible Employees must report all known information concerning an alleged incident of sexual misconduct to the **Title IX Coordinator**.



Source:  
*UT System Model Policy for Sexual Misconduct (2021)*

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## Definition of “Failure to Report” for Responsible Employees

If a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

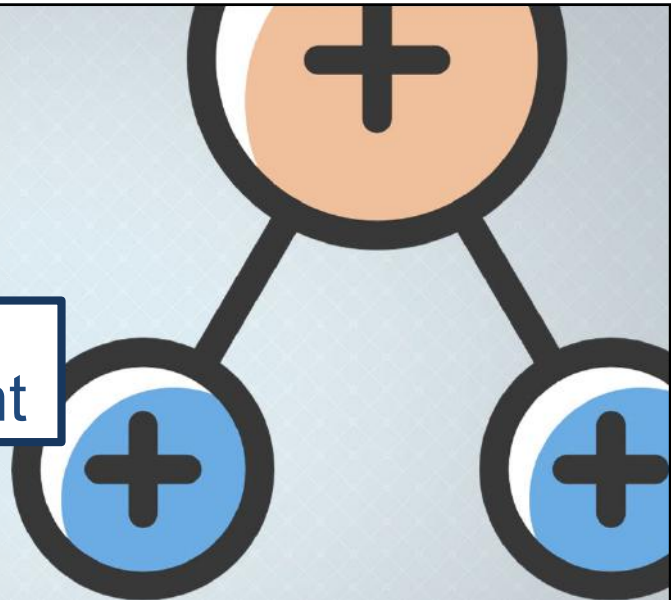


Source:  
*UT System Model Policy for Sexual Misconduct (2021)*

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## Triage & Case Management



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## Operational Roles, Delegations, & Structure?

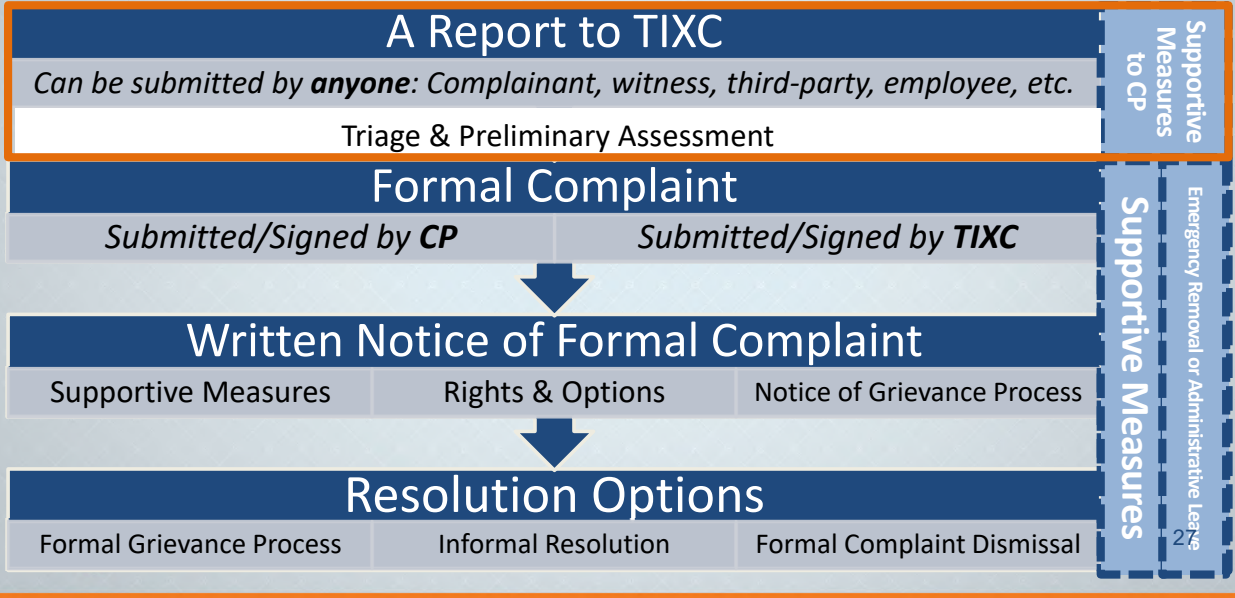
Title IX Coordinator	Title IX Deputies	Case Mgt Coordinators	Investigators	Advisors provided by the Institution
Informal Resolution Facilitators	Appellate Role for Formal Complaint Dismissals	Threat Assessment Personnel	Decision-Makers for Emergency Removals	Adjudication Transition Coordinators
Hearing Officers	University Representative Role at Hearings	Appellate Role for Policy Violation Determinations	Legal Affairs Support	Others ???

## Documentation & Record Keeping

- Documentation Checklists & Forms
- Intake & Initial Assessments
- Case Management Timelines & Decisions
- Contact & Communications
- Notices, Letters, Dismissals, & Reports
- Written Determinations
- Appeals
- Data Systems for Electronic & Hard Copy Records



# Resolution Flowchart



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## Basis of the Allegation(s)?

- Alleged **incident** of prohibited conduct
- Alleged **pattern** of prohibited conduct
- Alleged **climate issue(s)** in an area or department



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### Allegation Type(s): Sexual Misconduct Policy?

Sex Discrimination	Sexual Harassment	Sexual Assault	Dating or Domestic Violence
Stalking	Sexual Exploitation	Other Inappropriate Sexual Conduct	Retaliation
Failure to Report	False Report or False Information	Interference with an Investigation	Other(s) ???



### Other Triage Analysis & Considerations

CP & RP Affiliation to the Institution?	Incident Location(s)	Date/Time of Incident
Time of Alleged Incident: Institutional Nexus or Jurisdiction?	Institutional Action? Preventative Action? Remedies?	Level of Concern? Threat Level?



## A Report to the Title IX Coordinator (TIXC)

TIXC must promptly contact the **complainant** to discuss the availability of supportive measures (with or without a formal complaint), consider the wishes of the complainant, and explain the process for filing a formal complaint.



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## Examples of Supportive Measures

**Non-Disciplinary & Non-Punitive Measures...**  
that do not unreasonably burden the other party

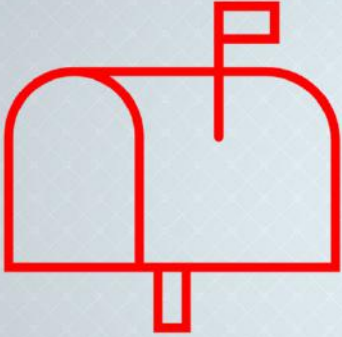
Housing Reassignment	Counseling Services	Class Extensions or Adjustments
Work or Class Modifications	Class Withdrawal or Retake (w/o penalty)	Leave of Absence
Mutual No-Contact Btwn Parties	Campus Escort Services	Increased Campus Security



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## Disciplinary or Punitive Measures



Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an Emergency Removal is appropriate.



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## Party's Rights (Summary)

A **Complainant** and **Respondent** have the following rights during a grievance process:

- To be informed of and have access to counseling, medical, academic, and other applicable **support services**, including **confidential resources**.
- To be informed of the importance of a victim going to a **hospital for treatment** and the **preservation of evidence**, if applicable, as soon as practicable after an alleged incident.
- To be informed of a **notice of formal complaint** to the University, whether filed by a CP or the TIXC.
- To receive a **prompt, fair, equitable, and impartial grievance process**.
- To receive information and ask questions about the **formal and informal processes**.



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## Party's Rights (Cont.)

- To be given **equal chance** to participate in a grievance process, including the opportunity to identify witnesses and other relevant evidence.
- To choose **not** to actively participate in the grievance process, if desired.
- To have an **advisor of choice** present during all meetings and grievance proceedings.
- To have an **advisor provided** for a party at a **hearing** under the Title IX/SH grievance process, if an advisor of choice is not present.



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## Party's Rights (Cont.)

- To have access and equal opportunity to **inspect** and **review any evidence obtained** as part of the investigation, and to receive a copy of the completed investigation report.
- To be **equally informed** of any **determinations** regarding responsibility, dismissals of formal complaints, and/or a party's filing of an appeal.
- To **appeal** a determination regarding responsibility and/or dismissals of formal complaints.
- To file a report with **local** and/or **campus law enforcement** authorities.



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## Complainant's Rights

(related to the Grievance Process)

- To **report** an incident and/or **file a formal complaint** with the University.
- To **request** in writing that the University **not investigate** a reported incident and be **informed** of the **University's decision** whether or not to investigate.
- To **request** in writing a **dismissal** of a formal complaint (e.g. withdraws the formal complaint or any allegations therein).



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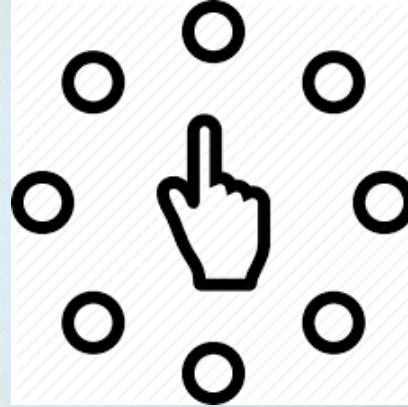
## Other Required Action

Type of Concern	Action
Non-emergency behavioral or wellness issues(s)	Refer to Behavior Intervention Team (BIT) or campus equivalent
Immediate safety concerns (emergencies) or welfare check required	Report immediately to 911
Clery reportable crimes that meet Clery geography requirements and/or timely warning requirements	<u>Timely Warnings</u> : Report immediately to campus law enforcement <u>Clery Crime Reporting</u> : Report to the campus Clery Manager
Alleged abuse and/or neglect of minors	Report immediately to Dept. of Family & Protective Services (DFPS): 800-252-5400
Alleged conduct could violate other institutional policies	Refer to the appropriate office(s) who oversees the applicable policies

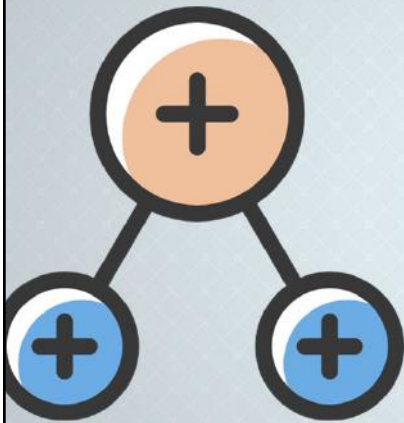
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## TIXC: Options for Next Steps

- Supportive Measures for the CP
- CP's right to file a formal complaint
- TIXC files a formal complaint, in lieu of a Reluctant Complainant and/or compelling reasons to investigate further...



## TIXC: File a Formal Complaint?



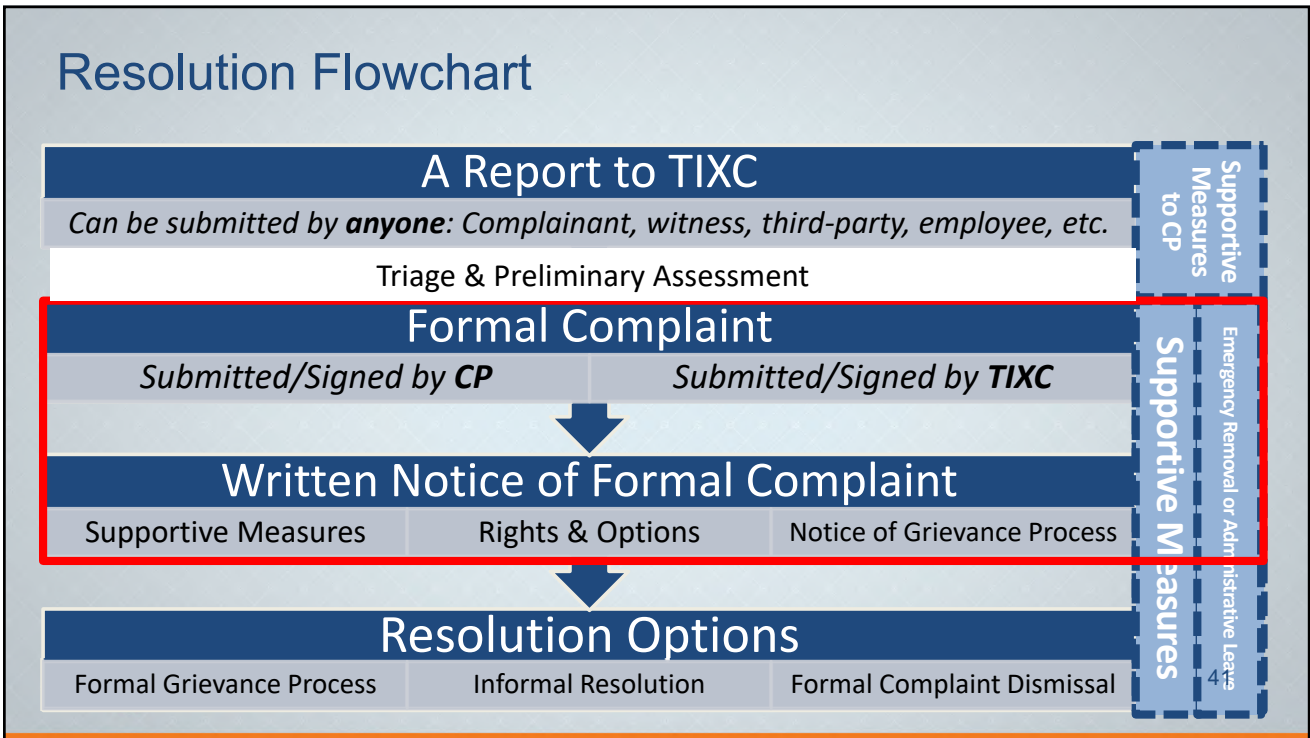
### FAQ's:

- When should the Title IX Coordinator sign a formal complaint?
- Under what circumstances?

### Consider if there are compelling reasons:

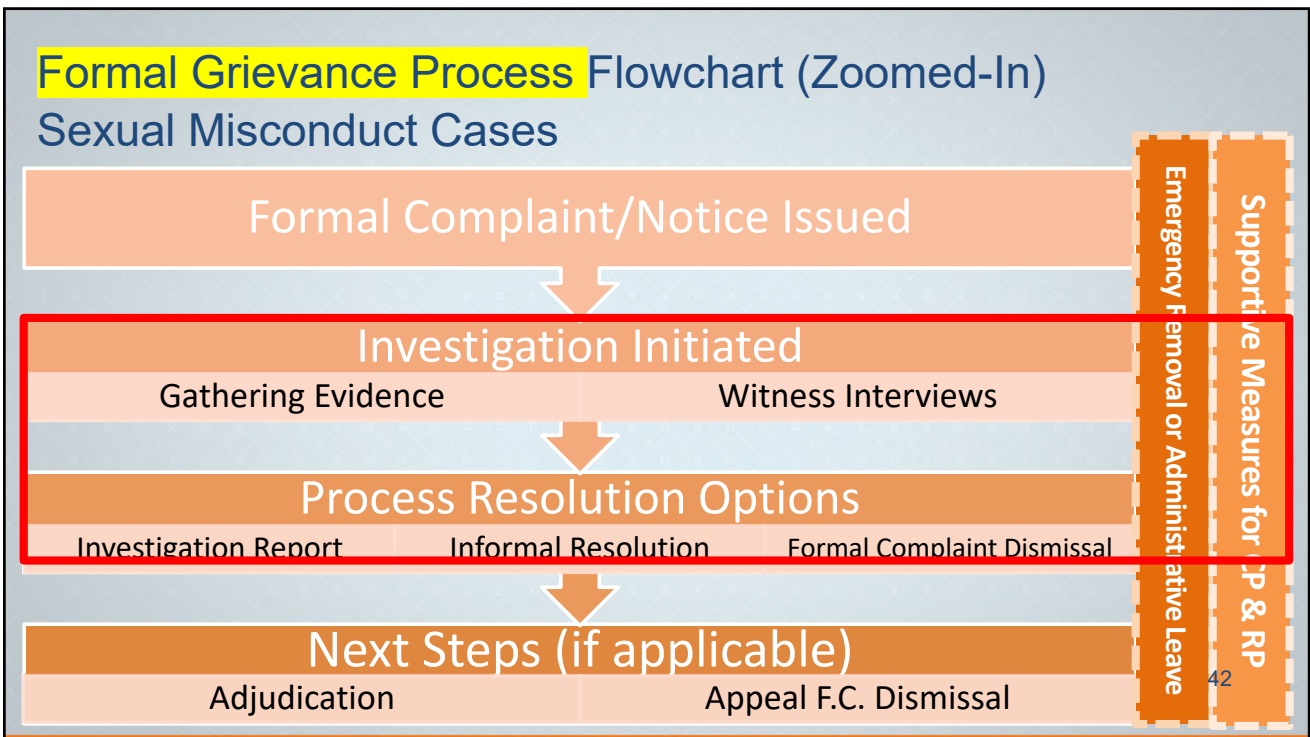
1. The **nature, circumstances, & seriousness** of the alleged conduct;
2. The **safety & risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5. Other relevant factors in the specific matter?

# Resolution Flowchart



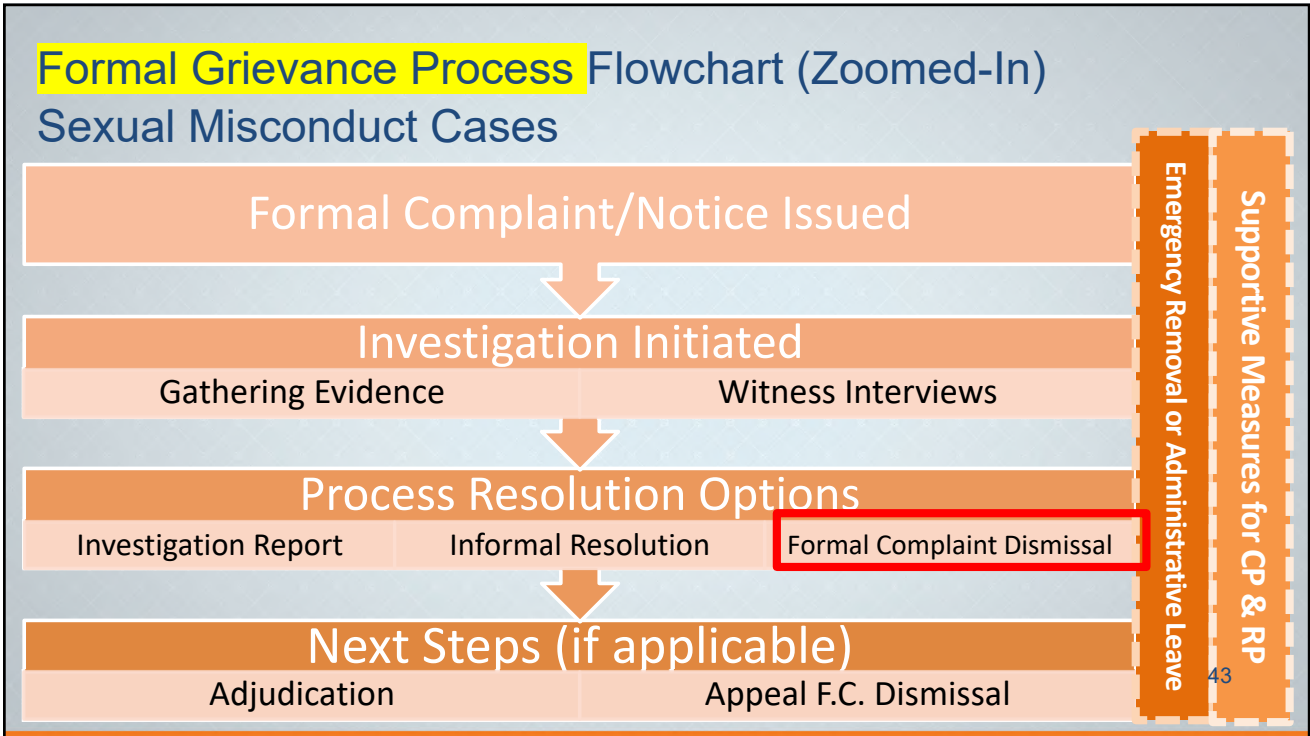
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# Formal Grievance Process Flowchart (Zoomed-In) Sexual Misconduct Cases



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# Formal Grievance Process Flowchart (Zoomed-In) Sexual Misconduct Cases



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## Mandatory Formal Complaint Dismissals under Title IX

**Mandatory Dismissals** are required when the **definitional** or any element of the **jurisdictional** framework under Title IX is not met:

- Conduct alleged constitutes “**sexual harassment**” under the regulations;
- Conduct alleged occurs in the institution’s “**education program or activity**”;
- Conduct alleged occurs against a person “**in the United States**”; or
- Complainant is **participating in** or **attempting to** participate in the “education program or activity” of the institution.

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If **Mandatory Dismissal** is required, then are additional **discretionary reasons** for a dismissal applicable to the specific circumstances?

- CP expressly **prefers to dismiss** the formal complaint or requests to not investigate the matter.
- RP was an employee and is **no longer employed** by the institution at the time the formal complaint is filed.
- Any **specific circumstances** that prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- The conduct alleged does not meet the definition of **any** prohibited conduct under the institution's Sexual Misconduct Policy.

## Additional Considerations



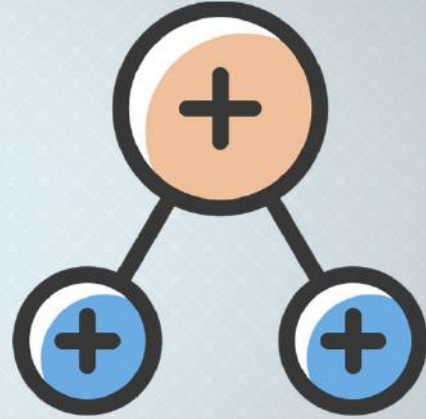
Dismissing a Formal Complaint under Title IX doesn't preclude an institution from addressing conduct prohibited under an institution's policy through a fair and equitable grievance process...



## Triage Again

Consider compelling reasons for continuing a grievance process:

1. The **nature, circumstances, & seriousness** of the alleged conduct;
2. The **safety & risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5. Other relevant factors in the specific matter?



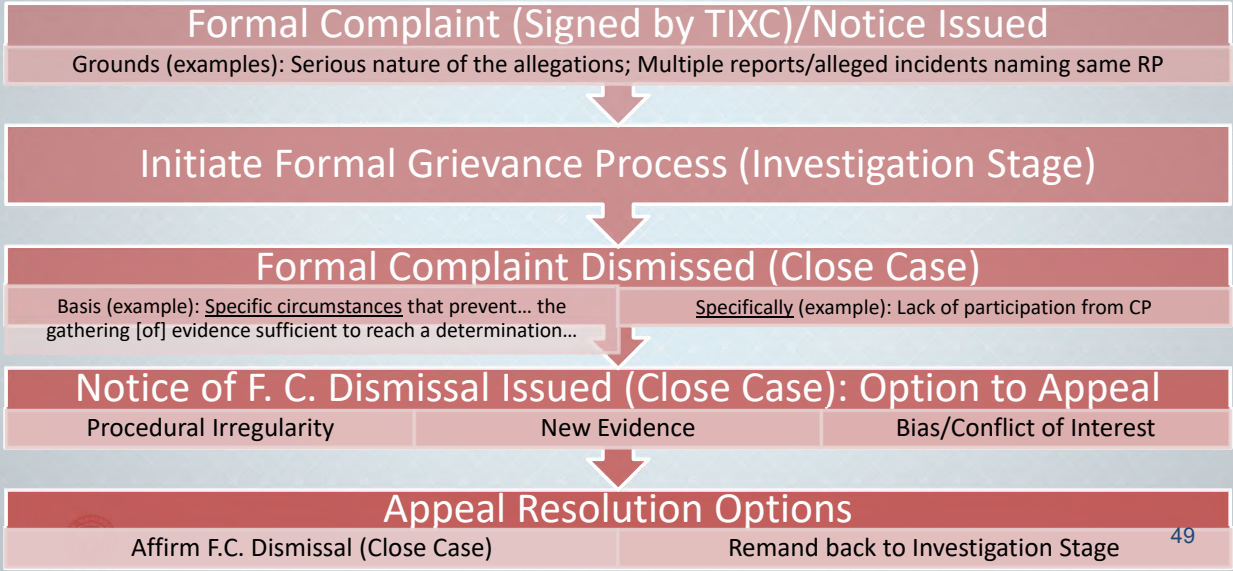
## Notice of Formal Complaint Dismissal

1. Note the reasons for the **mandatory dismissal "under Title IX"** (if applicable).
2. Explain the **basis/rationale** for the following:
  - o Additional discretionary reason(s) for dismissing the formal complaint under the institution's policy and closing the case; **or**
  - o Additional compelling reason(s) for continuing a grievance process under the institution's policy (e.g. the allegations still apply to the policy).
3. Option to Appeal the F.C. Dismissal
4. Outline next steps in the process (if applicable) **or** note the conclusion/end of the process with this formal complaint dismissal.



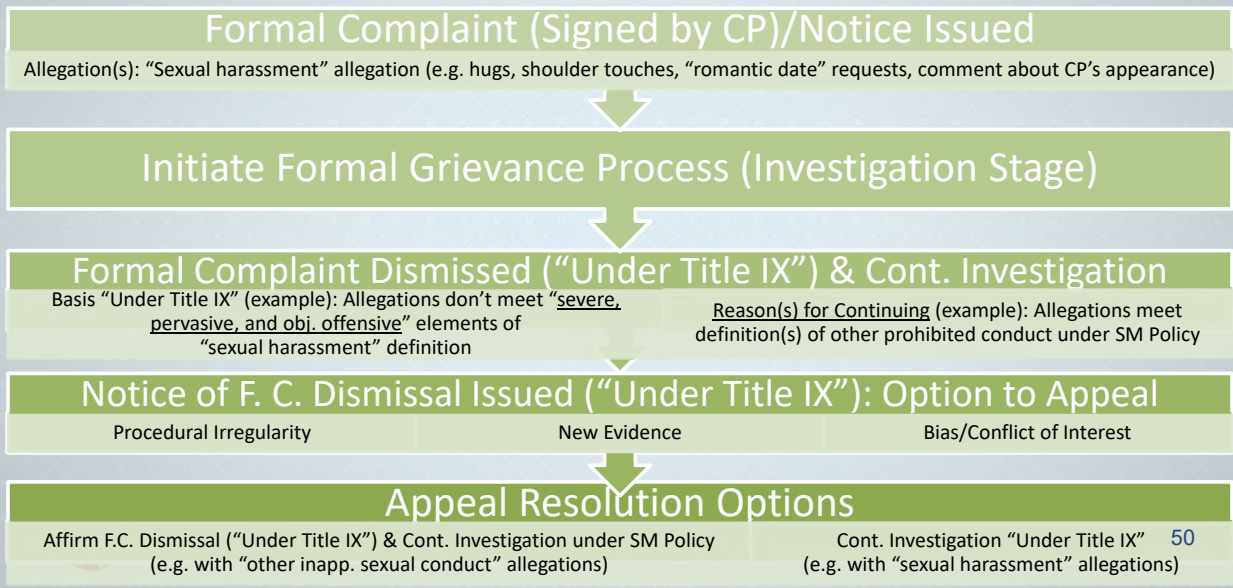


## Formal Complaint Dismissal (Example #1)



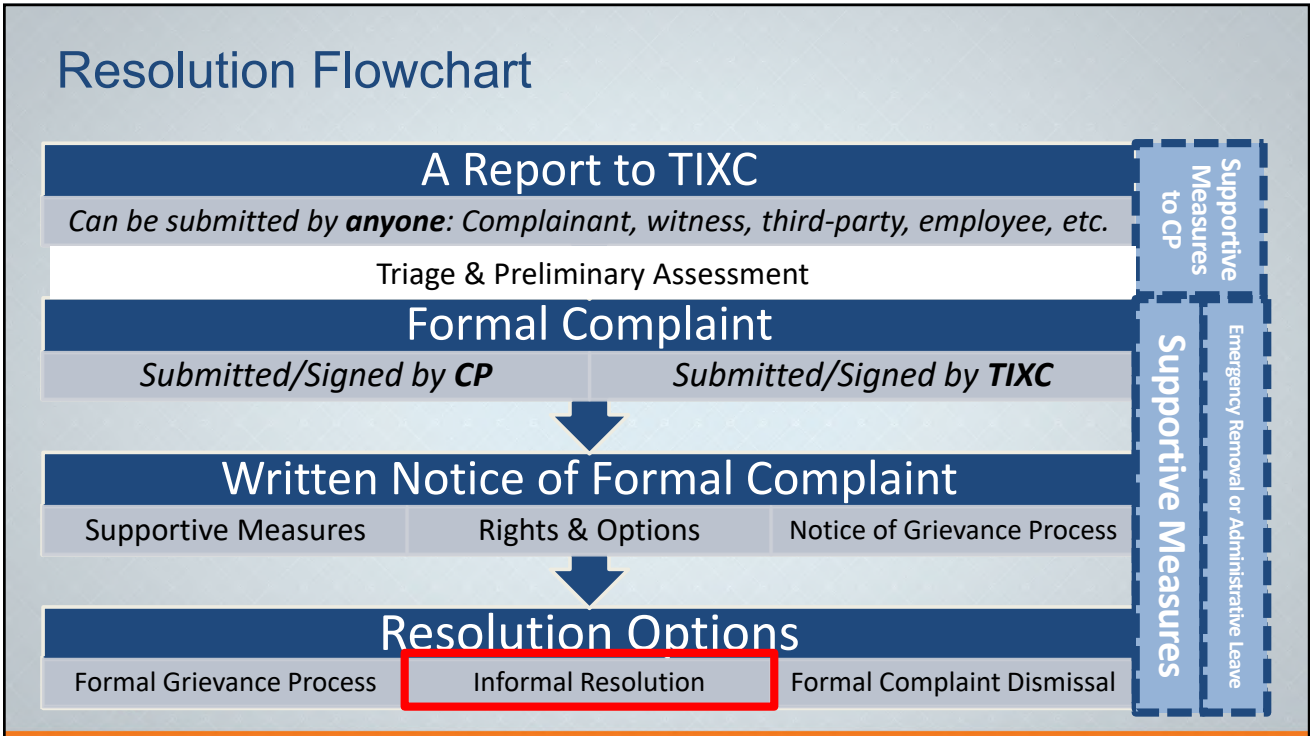
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## Formal Complaint Dismissal (Example #2)



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# Resolution Flowchart



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## Informal Resolutions

- 1. It's an alternative resolution option** once a formal complaint is filed.
  - Available as an option at any time prior to reaching a determination regarding responsibility.
  - Doesn't involve a full investigation & adjudication.
  - May be facilitated through **mediation** (as an example).
  - Informal Resolution Process must include:
    - (a) Written notice of allegations,
    - (b) Requirements of the informal process, &
    - (c) Any consequences resulting from participating in an informal process (e.g. record keeping).

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## Informal Resolutions (Cont.)

2. Not permitted as a resolution option “under Title IX” when an **employee respondent** is alleged of “sexual harassment” by a **student complainant**.
3. Examples of other non-applicable reasons\* due to seriousness and/or pattern of allegations:
  - Sexual Harassment cases
  - Sexual Violence cases
  - Dating or Domestic Violence cases
  - Stalking cases
  - The same respondent has previous informal resolution agreements

\* Check the institution’s Sexual Misconduct Policy for specific provisions



## Informal Resolution Timeframe (Example)


Informal Resolutions of a formal complaint will be concluded within **45 days** of notice to the institution that both parties wish to proceed with the Informal Resolution process

**Note:** Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for good cause.

- Provide **notice** to the parties for temporary delays or extensions




Source: UT System Model Policy for Sexual Misconduct (2021)



Bottom Line

- Be **consistent**
- Refer to **case precedent** (e.g. similar facts or elements)
- Follow your **policy** and **process**



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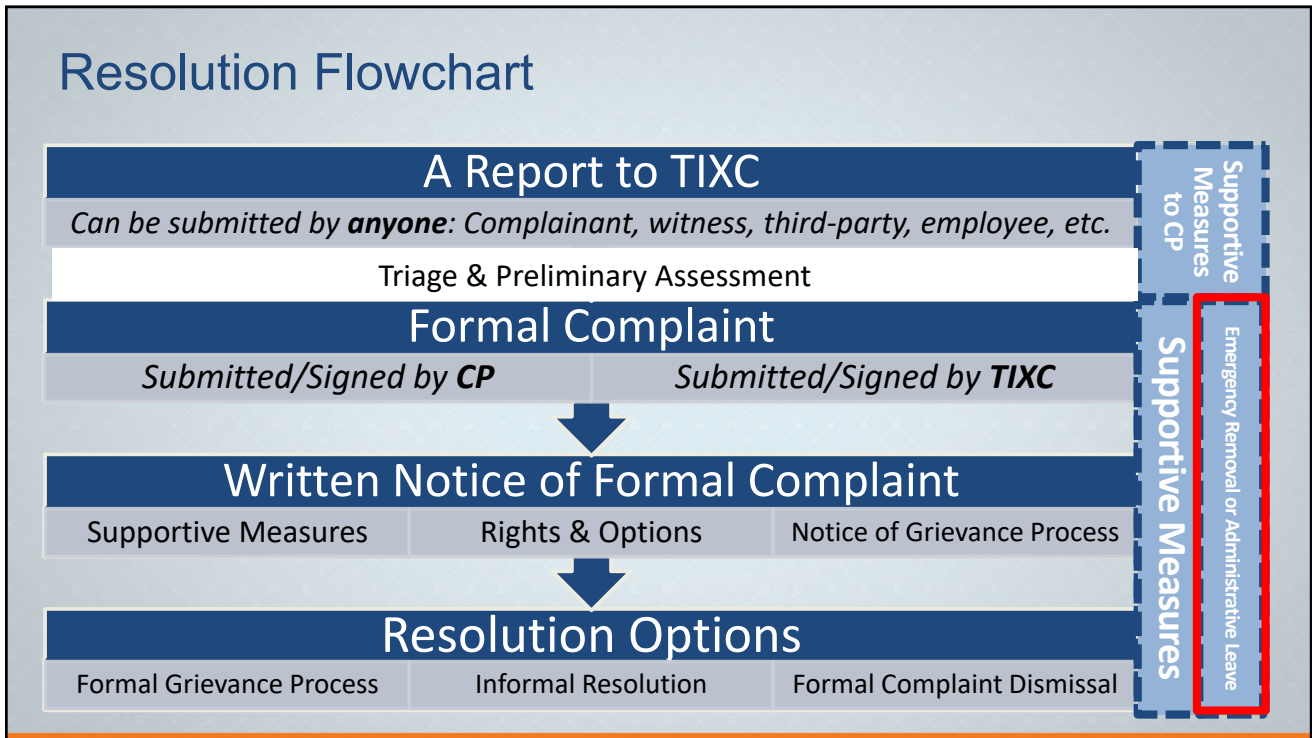
Threat Assessment  
Overview &  
Emergency Removals



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## Resolution Flowchart



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## Emergency Removals

- 1. Individualized safety & risk analysis:** Determines that immediate threat to the physical health & safety of any student or other individual arising from the allegations justifies the respondent's removal from the education program or activity.
  - Notice & opportunity to challenge the decision immediately following the removal.
  - Rights under **ADA & Section 504** still apply.
- 2. Doesn't preclude** an institution from placing non-student employee respondents on **administrative leave** during the pendency of the grievance process.

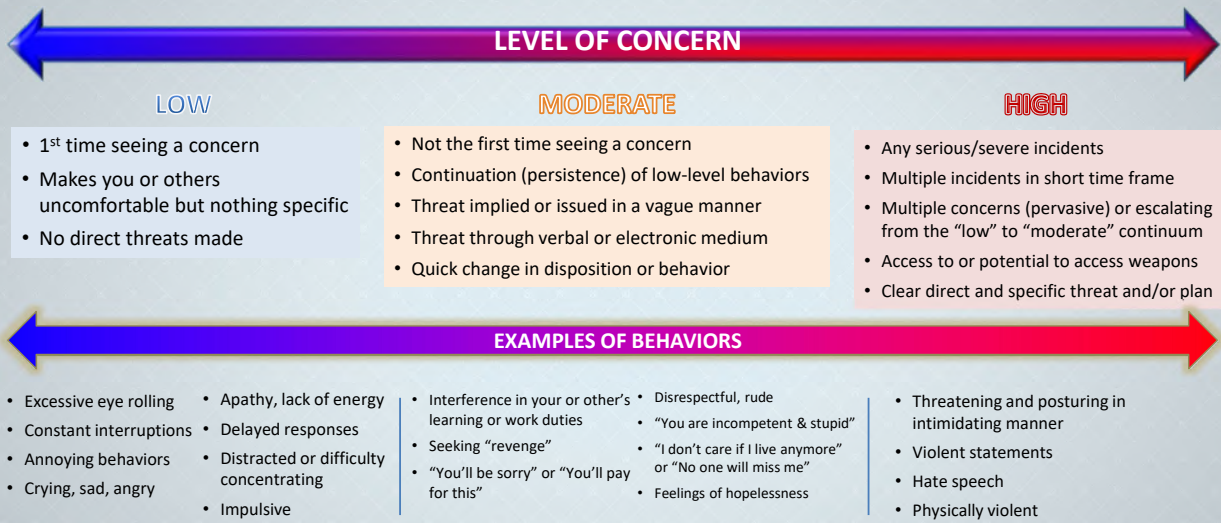
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# Emergency Removals FAQ's

- When should an emergency removal be initiated by the institution?
- Under what circumstances?
- Who makes this decision?



## Crisis/Threat Continuum



# Special Case Mgt Considerations: Sexual Violence, IPV, & Stalking Cases



## Determining Predominant Aggressors

### Common Considerations:

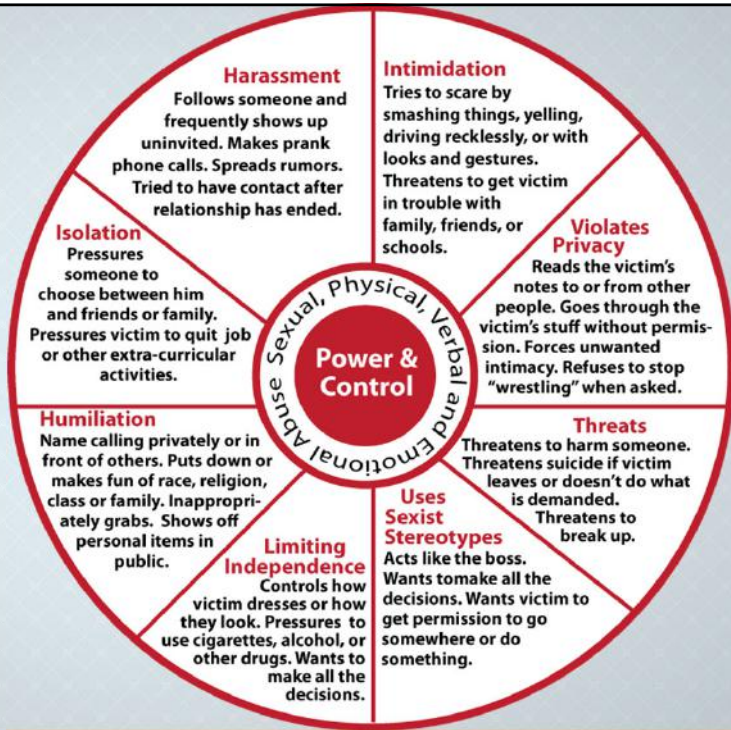
- Indicators of **power & control**
- Presence or threat of a **weapon**
- **History** of dating or domestic violence
- Aggressive or hostile **body language**
- Pre-existing **protective orders** or “**no contact**” directives
- Comparative extent of **injury** (if both are injured)
- **Property** damage
- Elements of **fear**



Source:  
*The National Center for Campus Public Safety*

# Power & Control Wheel (Examples)

Source: [www.alteristic.org](http://www.alteristic.org)



# Bottom Line for Emergency Removals

- Establish & maintain a **communication plan** to key partners:
  - BIT;
  - Dean of Students; or equivalent
- Know who is making the **key decisions** for Emergency Removals
- Be **consistent** with communication & decision-making
- Refer to **case precedent** (e.g. similar fact or elements)
- Follow your **policy** and **process**





**Case Mgt: Closing Steps of the Investigation**

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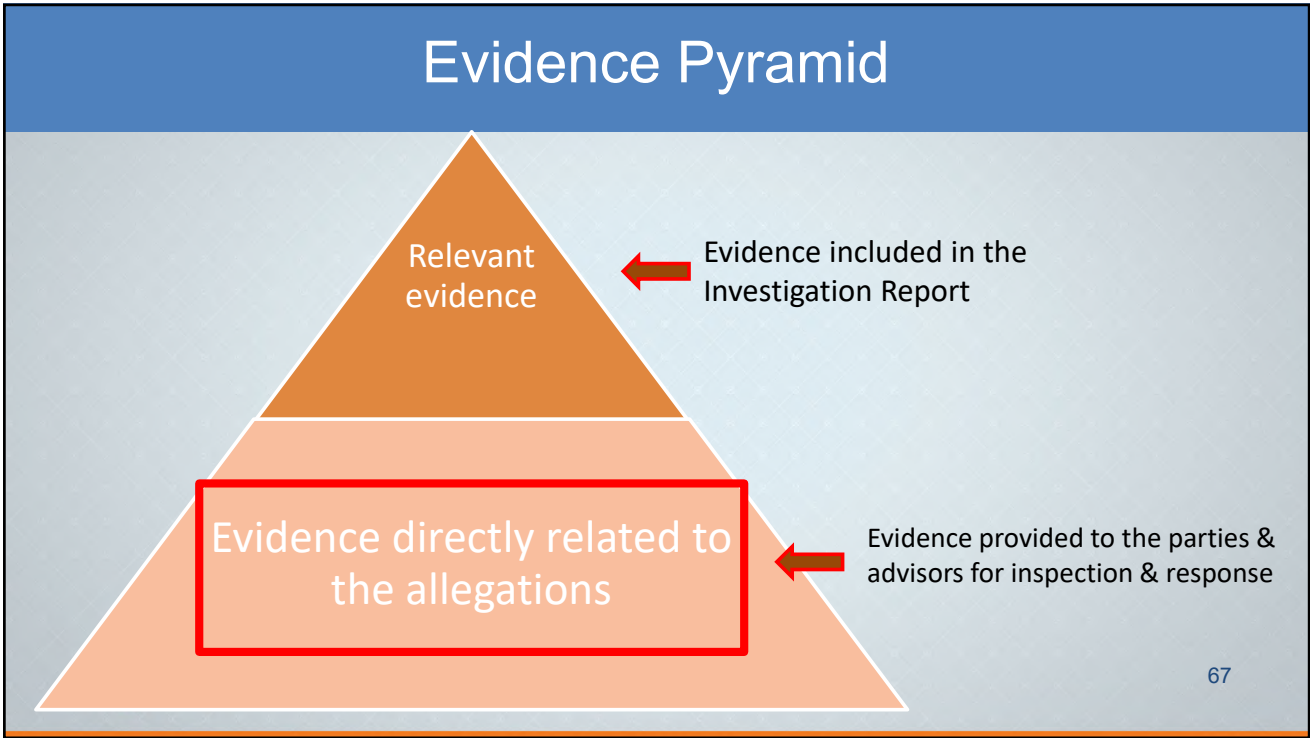
### Advisor Considerations

- Is an advisor of choice involved?
- Access to the related evidence & the finalized investigation report (closing steps of the investigation).
- Consider providing an advisor, if an advisor of choice has not been involved.

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### Access to Evidence

Equal opportunity to both parties (& the advisors) to **inspect & review any evidence obtained** that is directly related to the allegations in the formal complaint.



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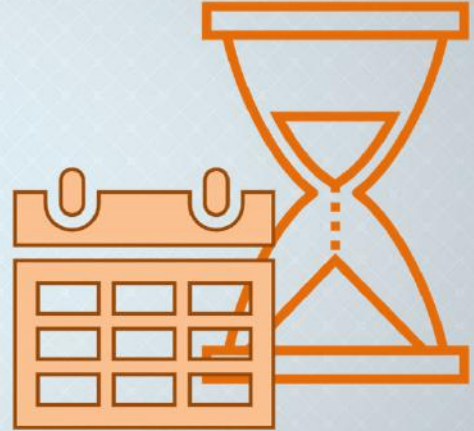


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## Access to Evidence: When?

- Upon request from a CP, RP, or an Advisor?
- At the end of the investigation?



## Access to Evidence (Cont.)

Send each party (& the advisors\*) the applicable evidence:

- In hard copy or electronic format
- At least 10 days to inspect, review, & respond to the evidence
- All responses to the evidence must be submitted in writing to the investigator(s)

*\* Advisor of choice; or the provided advisor by the institution (If applicable)*

## Access to Evidence (Cont.)

The investigators will consider all timely responses submitted by the parties **prior** to completing the investigation report.

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## Draft vs. Completed Investigation Report

### **FAQ's:**

- When should the investigation report be released to the parties (and the party's advisors)?
- Can the institution provide a draft investigation report first?



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## Access to the Completed Investigation Report

Send each party (& the advisors\*) the completed investigation report:

- At least 10 days prior to the scheduled hearing
  - Why? Opportunity for the parties to inspect, review, & respond to the investigation report (at the hearing)
- A copy of the investigation report to the TIXC and hearing officer assigned.

*\* Advisor of choice; or the provided advisor by the institution (If applicable)*



## Investigation Timeframe (Example)

The investigation of a formal complaint will be concluded within **90 days** of the filing of a formal complaint

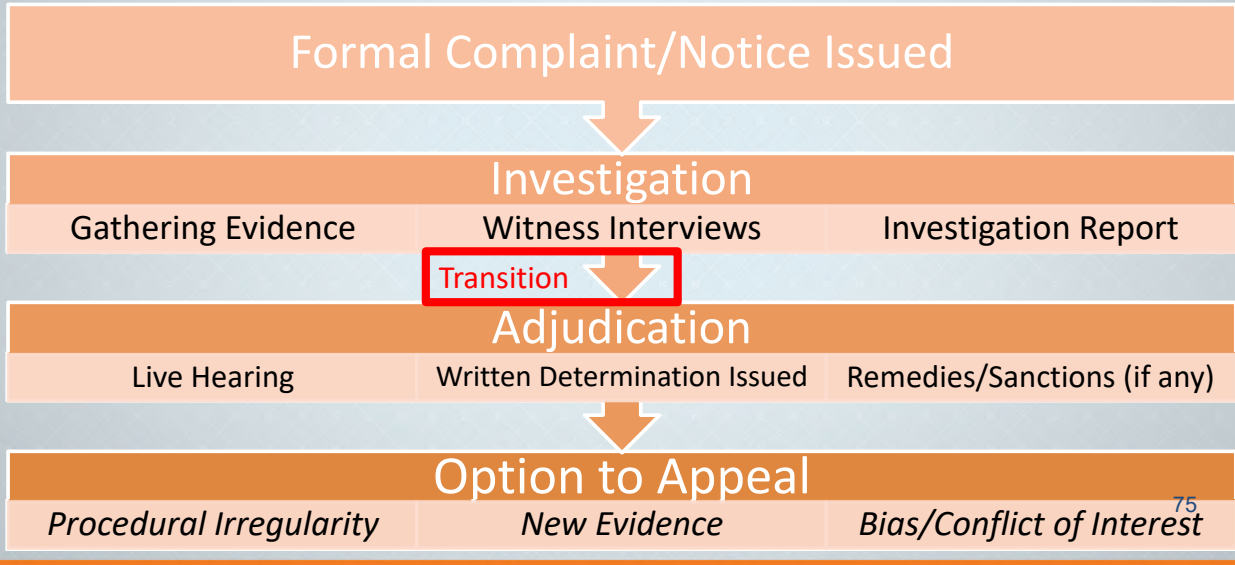
**Note:** Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for good cause.

- Provide **notice** to the parties for temporary delays or extensions



*Source: UT System Model Policy for Sexual Misconduct (2021)*

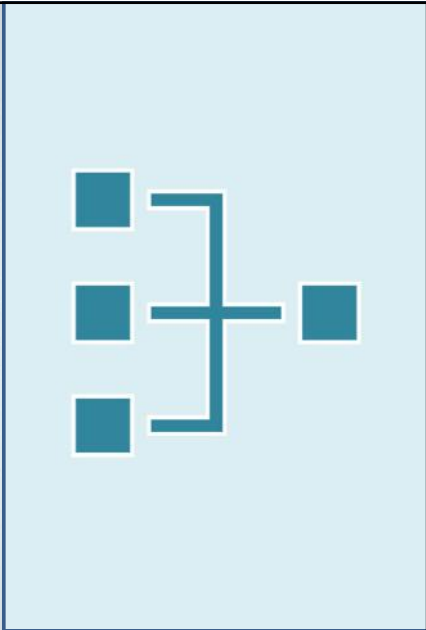
## Formal Grievance Process Flowchart (Zoomed-In) Title IX/Sexual Harassment



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### Transition to Adjudication

- Transition process to the adjudication office? Referral?
- An administrative coordinator for the adjudication intake, scheduling, organizing, & communicating the next steps (e.g. hearing) to all participants.



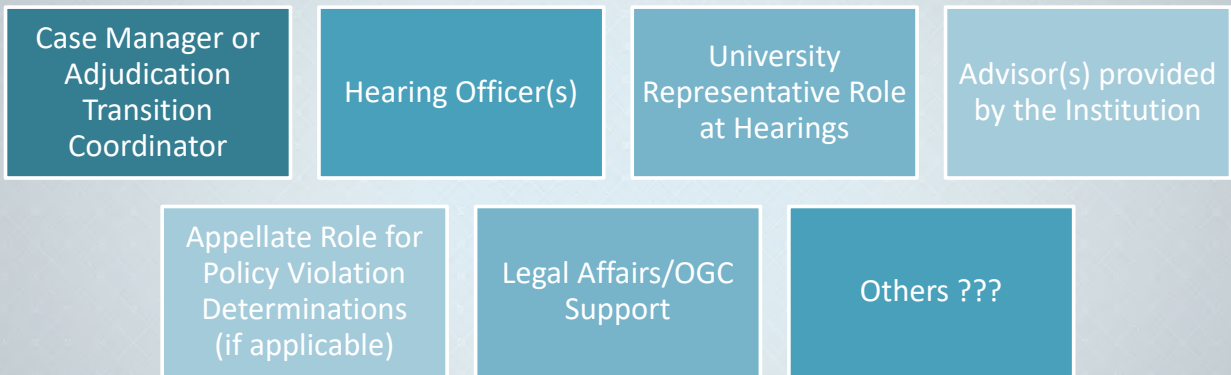
76

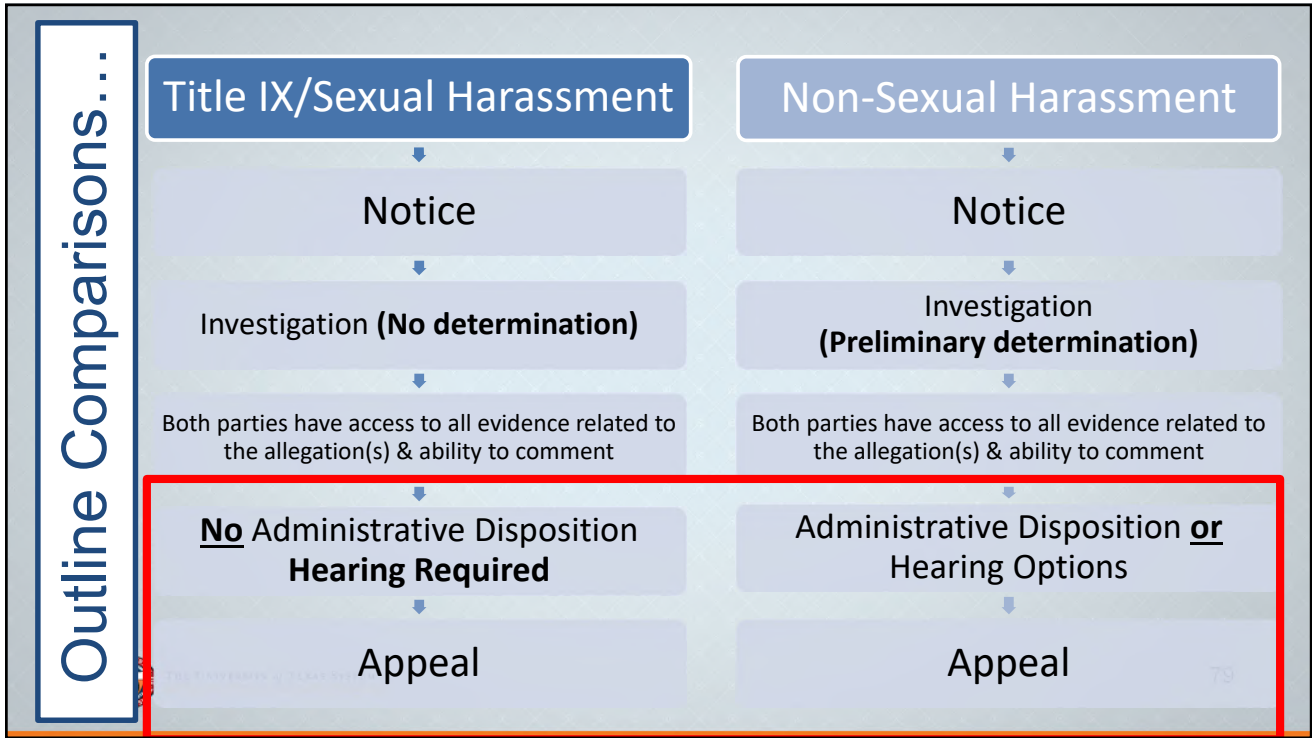
## Adjudication Intake



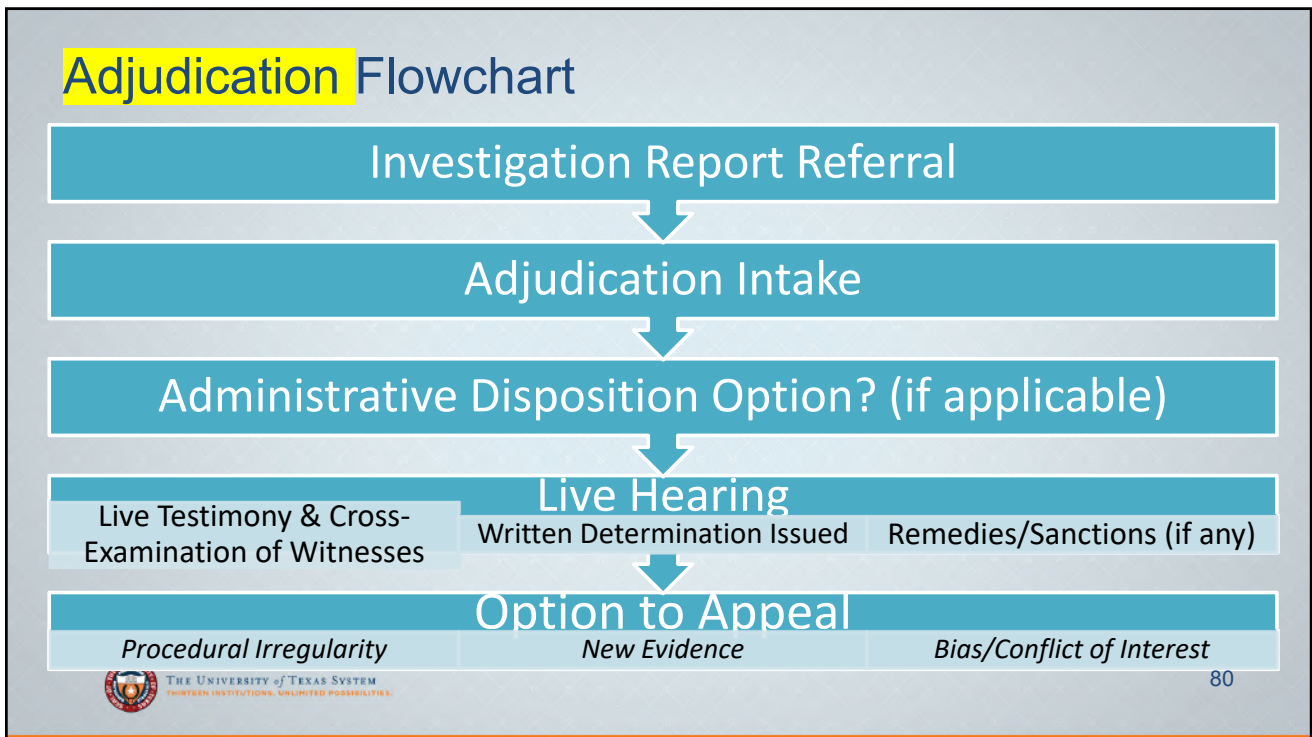
Referral Type (RP)	Adjudication Office (Examples)
Student	Student Conduct
Faculty	Provost
Staff	Human Resources

## Adjudication Roles, Operations, & Structure?





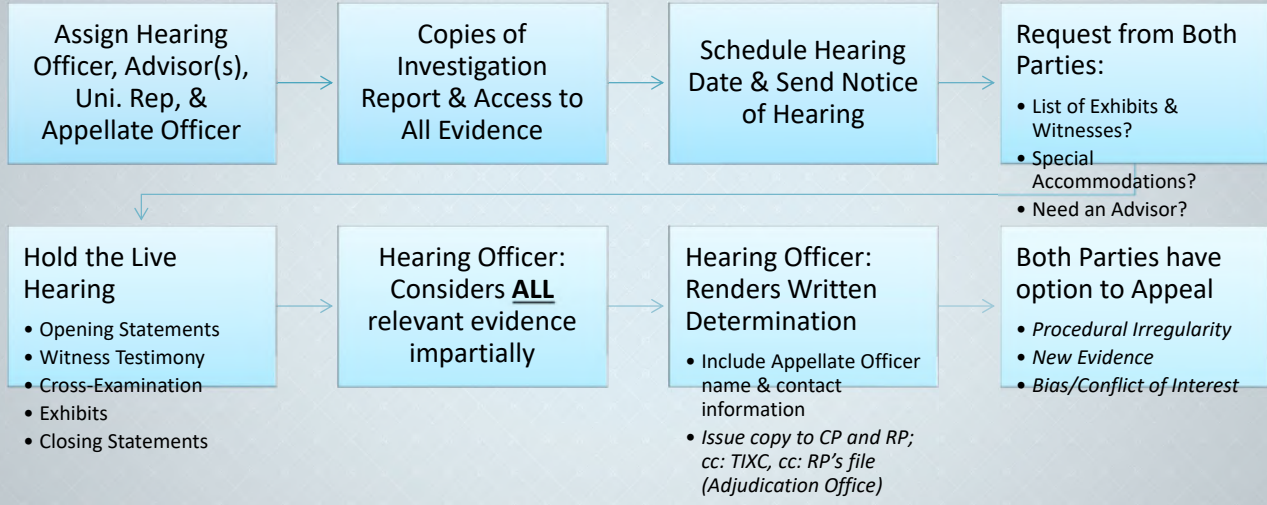
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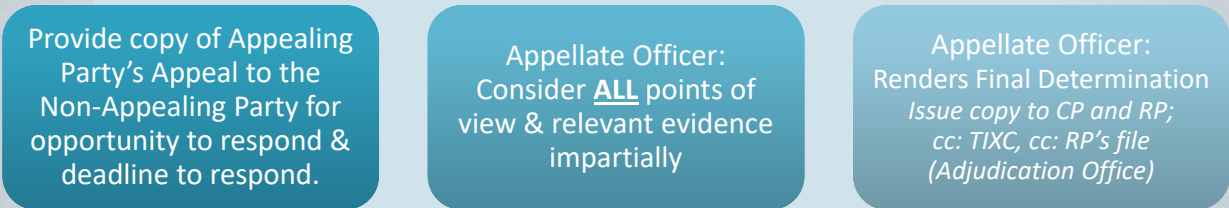
# Live Hearing: Logistics Flowchart



Specific deadlines may be published in the institution's policy and/or procedures.

# Appeal: Logistics Flowchart

If a Party submits an Appeal to the Appellate Officer...



Specific deadlines may be published in the institution's policy and/or procedures.



## Grievance Process Timeframe (Example)

The entire Grievance Process will be completed in no more than **150 days** from the filing of the formal complaint

**Note:** Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for good cause.

- Provide **notice** to the parties for temporary delays or extensions



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Source: UT System Model Policy for Sexual Misconduct (2021)

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## Documentation & Record Keeping

- Documentation Checklists & Forms
- Intake & Initial Assessments
- Case Management Timelines & Decisions
- Contact & Communications
- Notices, Letters, Dismissals, & Reports
- Written Determinations
- Appeals
- Data Systems for Electronic & Hard Copy Records



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A graphic for a Q & A session. It features a light blue background with a grid pattern. On the left, the text "Q & A" is enclosed in a dark blue rectangular box. To the right, there are five speech bubbles of various colors (red, orange, blue, teal) each containing a white question mark. At the bottom left is the University of Texas System logo and text: "THE UNIVERSITY of TEXAS SYSTEM THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES." At the bottom right is the number "85".

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## Contact Information

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